Supreme Court, U.S.
FILED

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No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2004

DIANA VAZQUEZ-VALENTIN,
Petitioner

v.

VICTOR J. SANTIAGO-DIAZ, in his personal capacity and as Mayor of Toa Baja; MUNICIPALITY OF TOA BAJA; MILAGROS DELGADO-ORTIZ, in her personal capacity and as Human Resources Director of the Municipality of Toa Baja,
Respondents

Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the appellate court erred by not following the U.S. Supreme Court precedent in Cone v. West Virginia Pulp & Paper Co., 330 U.S. 212 (1947), and vacating the jury verdict and directing the entry of judgment for the party that failed to make a motion under Federal Rule of Civil Procedure 50 (b) after the verdict.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Diana Vazquez-Valentin respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINION BELOW

The judgment of the Court of Appeals appears in Vazquez-Valentin v. Santiago-Diaz, No. 03-1949, slip op. (1st Cir. September 22, 2004) (Appendix 1a-52a).

JURISDICTION

The Court of Appeals entered its judgment on September 22, 2004. A Petition for Rehearing or for Rehearing En Banc was filed and the same were denied on November 17, 2004 (Appendix 53a-54a). The jurisdiction of this court is invoked under 28 U.S.C. § 1254 (1).

STATUTORY PROVISIONS INVOLVED

The statute involved in this case is the Federal Rule of Civil Procedure 50 (b) which states, in its pertinent part:

"**Renewing Motion for Judgment After Trial: Alternative Motion for New Trial.** If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment – and may alternatively request a new trial or join a motion for new trial under Rule 59. In ruling on a renewed motion, the court may:

(1) if a verdict was returned:
    (A) allow the judgment to stand,
    (B) order a new trial, or
    (C) direct entry of judgment as a matter of law; or
(2) if no verdict was returned;
    (A) order a new trial, or

(B) direct entry of judgment as a matter of law."

STATEMENT

On May 14, 2002, after nine days of jury trial, the jury returned a verdict in favor of plaintiff Diana Vazquez-Valentin, petitioner herein, and against all defendants, respondents herein, for claims based on political discrimination and constructive discharge under the First Amendment of the United States Constitution and 42 U.S.C. § 1983. On that same date the district court issued its judgment pursuant to the jury verdict, and the judgment was entered on docket on may 16, 2002.

Before submitting the case to the jury defendants moved for judgment as a matter of law under Rule 50 (a) of the Federal Rules of Civil Procedure, and the court denied the same on May 10, 2002; however, defendants did not renew the Rule 50 motion under Rule 50 (b) after the jury verdict.

On May 31, 2002, defendants filed a Federal Rule of Civil Procedure 59 motion requesting the court to set aside the

compensatory and punitive damages award; a remittitur of the damages warded at trial. On May 5, 2003, the district court issued a final judgment denying the Rule 59 motion, and stating that it had been a remittitur and not a motion for new trial.

Defendants appealed the case to the First Circuit Court of Appeals on November 3, 2003, raising, *inter alia,* the issue of the insufficiency of the evidence to withstand a motion as a matter of law, and after oral argument, on September 22, 2004, the appellate court issued a decision vacating the judgment of the district court and ordering it to enter judgment for the defendants. Appendix 1a-52a. The Court of Appeals stated in note 8 of its decision that although defendants failed to renew their motion under Rule 50 after the jury verdict, to preserve for appeal the district court's denial of said motion, nevertheless, it was invoking its authority to assess the sufficiency of the evidence in the case.

Plaintiff-appellee Vazquez-Valentin filed a petition for rehearing or for rehearing en banc citing this Honorable

Court's precedent in Cone v. West Virginia Pulp & Paper Co., 330 U.S. 212 (1947), and in addition citing First Circuit political discrimination cases where similar evidence had been found to constitute First Amendment violations; however, the petition was denied on November 17, 2004. Appendix 53a-54a.

On January 27, 2005, the district court issued its final judgment pursuant to the Judgment of the First Circuit Court of Appeals. Appendix 55a.

REASONS FOR GRANTING THE PETITION

Petitioner requests form this Honorable Court to grant her petition for a writ of certiorari pursuant to Rule 10 (c) of the Rules of this Court, because there are special and important reasons, since the Court of Appeals for the First Circuit, contrary to decisions of this Court, reviewed the sufficiency of the evidence in the absence of a post-verdict Rule 50 (b) motion by defendants-appellants, for judgment as a matter of law, thus, ignoring this Honorable Court's precedent in Cone v. West Virginia Pulp & Paper Co., 330 U.S. 212 (1947).

Therefore, the First Circuit Court of Appeals departed from the accepted and usual course of judicial proceedings, which requires the exercise of the power of supervision by this Court.

In Halliday v. United States, 315 U.S. 94 (1941), like in Berry v. United States, 312 U.S. 492 (1941), this Court granted certiorari because of the importance of Rule 50 (b), even though it was not until Cone that it finally proceeded to deal specifically with Rule 50 (b), since in the earlier cases this Court had found that the evidence was sufficient to support the jury verdict.

This Honorable Court has upheld the basic tenet expressed in Cone: that the appellate court may not order judgment as a matter of law where the verdict loser has failed to comply strictly with Rule 50 (b). This principle has been followed or repeated, for example, in Globe Liquor Co. v. San Roman, 332 U.S. 571 (1948); in Fountain v. Filson, 336 U.S. 681 (1949); in Johnson v. New York, N.H. & H.R. Co., 344 U.S. 48 (1952); and in Neely v. Martin K. Eby Construction Co., Inc., 386 U.S. 317 (1967).

Given this Court's consistency and efforts through the years in defining and clarifying the consequence in the appeal of a party's failure to file a Rule 50(b) motion for judgment as a matter of law, the First Circuit Court of Appeals' refusal to follow this Court's precedent should be addressed for the benefit of the Bench and Bar.

CONCLUSION

For the foregoing reasons, the petitioner respectfully submits that the petition for a writ of certiorari should be granted and the judgment below reversed.

RESPECTFULLY SUBMITTED.

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